

AMENDED IN SENATE APRIL 12, 2012

**SENATE BILL**

**No. 1206**

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**Introduced by Senator Walters**

February 22, 2012

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An act to amend Sections 2040, 3048, and 3134.5 of the Family Code, relating to child abduction prevention.

LEGISLATIVE COUNSEL'S DIGEST

SB 1206, as amended, Walters. Child abduction prevention.

(1) Existing law requires, upon the commencement of proceedings for dissolution or nullity of marriage or legal separation of the parties, that the summons contain a temporary restraining order restraining both parties from, among other things, removing the minor child or children of the parties, if any, from the state without the prior written consent of the other party or an order of the court.

This bill would, additionally, provide that the temporary restraining order ~~require~~ *restrain* the parties ~~to surrender the passports and other travel documents of~~ *from applying for a new or replacement passport for* the minor child or children of the parties, ~~including a passport issued in the name of both the parent and the child, and restrain the parties from applying for a new or replacement passport for the minor child or children, if either party has strong familial, emotional, or cultural ties to another country, including foreign or dual citizenship. without the prior written consent of the other party or an order of the court.~~

(2) Existing law requires the court, in cases in which the court becomes aware of facts that may indicate a risk of abduction of a child, to consider specified factors in determining the risk of abduction and whether measures are needed to prevent that abduction. These preventative measures may include requiring the surrender of passports

and other travel documents and prohibiting a parent from applying for a new or replacement passport for the child.

~~This bill would require,~~

*If the court orders a parent to surrender passports and other travel documents as part of those the preventative measures described above, and if the parent is a foreign national, this bill would require the court to request that the name of a the parent and the child, if applicable, to or children be entered placed in the Prevent Departure Program of the United States Department of Homeland Security or any similar federal program designed to prevent unauthorized departures to foreign countries. The by contacting the Office of Children's Issues at the United States Department of State. If the court orders a parent to surrender passports and other travel documents, and prohibits the parent from applying for a new or replacement passport, this bill would also require the court would also require to enter the child's name to be placed of the child or children in the Children's Passport Issuance Alert Program of the United States Department of State by contacting the Office of Children's Issues at the United States Department of State and submitting the appropriate form with a court order showing that the court has jurisdiction over the matter.*

(3) Existing law authorizes the court, upon request of the district attorney, to issue a protective custody warrant to secure the recovery of an unlawfully detained or concealed child. The protective custody warrant for the child is required to contain an order that the arresting agency shall place the child in protective custody, or return the child as directed by the court.

This bill would authorize the court to also include within the protective custody warrant for the child an order to freeze the California assets of the party alleged to be in possession of the child.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. This act shall be known and may be cited as
- 2     Keisuke's Law.
- 3     SECTION 1.
- 4     SEC. 2. Section 2040 of the Family Code is amended to read:

2040. (a) In addition to the contents required by Section 412.20 of the Code of Civil Procedure, the summons shall contain a temporary restraining order:

(1) ~~(A) Restraining both parties from removing the minor child or children of the parties, if any, from the state, or from applying for a new or replacement passport for the minor child or children,~~ without the prior written consent of the other party or an order of the court.

~~(B) Requiring the parties to surrender the passports and other travel documents of the minor child or children of the parties, including a passport issued in the name of both the parent and the child, and restraining the parties from applying for a new or replacement passport for the minor child or children, if either party has strong familial, emotional, or cultural ties to another country, including foreign or dual citizenship. The court shall return the passports and other documents upon award of custody to the parent with primary custody, or to the party as the court determines to be in the best interest of the child. The court may initiate the protective measures specified in subdivision (b) of Section 3048 at any time if it becomes aware of facts that may indicate there is a risk of abduction of the minor child or children.~~

(2) Restraining both parties from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, without the written consent of the other party or an order of the court, except in the usual course of business or for the necessities of life, and requiring each party to notify the other party of any proposed extraordinary expenditures at least five business days before incurring those expenditures and to account to the court for all extraordinary expenditures made after service of the summons on that party.

Notwithstanding the foregoing, nothing in the restraining order shall preclude a party from using community property, quasi-community property, or the party's own separate property to pay reasonable attorney's fees and costs in order to retain legal counsel in the proceeding. A party who uses community property or quasi-community property to pay his or her attorney's retainer for fees and costs under this provision shall account to the community for the use of the property. A party who uses other property that is subsequently determined to be the separate property

1 of the other party to pay his or her attorney's retainer for fees and  
2 costs under this provision shall account to the other party for the  
3 use of the property.

4 (3) Restraining both parties from cashing, borrowing against,  
5 canceling, transferring, disposing of, or changing the beneficiaries  
6 of any insurance or other coverage, including life, health,  
7 automobile, and disability, held for the benefit of the parties and  
8 their child or children for whom support may be ordered.

9 (4) Restraining both parties from creating a nonprobate transfer  
10 or modifying a nonprobate transfer in a manner that affects the  
11 disposition of property subject to the transfer, without the written  
12 consent of the other party or an order of the court.

13 (b) Nothing in this section restrains any of the following:

14 (1) Creation, modification, or revocation of a will.

15 (2) Revocation of a nonprobate transfer, including a revocable  
16 trust, pursuant to the instrument, provided that notice of the change  
17 is filed and served on the other party before the change takes effect.

18 (3) Elimination of a right of survivorship to property, provided  
19 that notice of the change is filed and served on the other party  
20 before the change takes effect.

21 (4) Creation of an unfunded revocable or irrevocable trust.

22 (5) Execution and filing of a disclaimer pursuant to Part 8  
23 (commencing with Section 260) of Division 2 of the Probate Code.

24 (c) In all actions filed on and after January 1, 1995, the summons  
25 shall contain the following notice:

26  
27 "WARNING: California law provides that, for purposes of  
28 division of property upon dissolution of marriage or legal  
29 separation, property acquired by the parties during marriage in  
30 joint form is presumed to be community property. If either party  
31 to this action should die before the jointly held community property  
32 is divided, the language of how title is held in the deed (i.e., joint  
33 tenancy, tenants in common, or community property) will be  
34 controlling and not the community property presumption. You  
35 should consult your attorney if you want the community property  
36 presumption to be written into the recorded title to the property."  
37

38 (d) For the purposes of this section:

39 (1) "Nonprobate transfer" means an instrument, other than a  
40 will, that makes a transfer of property on death, including a

1 revocable trust, pay on death account in a financial institution,  
2 Totten trust, transfer on death registration of personal property, or  
3 other instrument of a type described in Section 5000 of the Probate  
4 Code.

5 (2) “Nonprobate transfer” does not include a provision for the  
6 transfer of property on death in an insurance policy or other  
7 coverage held for the benefit of the parties and their child or  
8 children for whom support may be ordered, to the extent that the  
9 provision is subject to paragraph (3) of subdivision (a).

10 (e) The restraining order included in the summons shall include  
11 descriptions of the notices required by paragraphs (2) and (3) of  
12 subdivision (b).

13 ~~SEC. 2.~~

14 *SEC. 3.* Section 3048 of the Family Code is amended to read:

15 3048. (a) Notwithstanding any other law, in any proceeding  
16 to determine child custody or visitation with a child, every custody  
17 or visitation order shall contain all of the following:

18 (1) The basis for the court’s exercise of jurisdiction.

19 (2) The manner in which notice and opportunity to be heard  
20 were given.

21 (3) A clear description of the custody and visitation rights of  
22 each party.

23 (4) A provision stating that a violation of the order may subject  
24 the party in violation to civil or criminal penalties, or both.

25 (5) Identification of the country of habitual residence of the  
26 child or children.

27 (b) (1) In cases in which the court becomes aware of facts that  
28 may indicate that there is a risk of abduction of a child, the court  
29 shall, either on its own motion or at the request of a party,  
30 determine whether measures are needed to prevent the abduction  
31 of the child by one parent. To make that determination, the court  
32 shall consider the risk of abduction of the child, obstacles to  
33 location, recovery, and return if the child is abducted, and potential  
34 harm to the child if he or she is abducted. To determine whether  
35 there is a risk of abduction, the court shall consider the following  
36 factors:

37 (A) Whether a party has previously taken, enticed away, kept,  
38 withheld, or concealed a child in violation of the right of custody  
39 or of visitation of a person.

1 (B) Whether a party has previously threatened to take, entice  
2 away, keep, withhold, or conceal a child in violation of the right  
3 of custody or of visitation of a person.

4 (C) Whether a party lacks strong ties to this state.

5 (D) Whether a party has strong familial, emotional, or cultural  
6 ties to another state or country, including foreign citizenship. This  
7 factor shall be considered only if evidence exists in support of  
8 another factor specified in this section.

9 (E) Whether a party has no financial reason to stay in this state,  
10 including whether the party is unemployed, is able to work  
11 anywhere, or is financially independent.

12 (F) Whether a party has engaged in planning activities that  
13 would facilitate the removal of a child from the state, including  
14 quitting a job, selling his or her primary residence, terminating a  
15 lease, closing a bank account, liquidating other assets, hiding or  
16 destroying documents, applying for a passport, applying to obtain  
17 a birth certificate or school or medical records, or purchasing  
18 airplane or other travel tickets, with consideration given to whether  
19 a party is carrying out a safety plan to flee from domestic violence.

20 (G) Whether a party has a history of a lack of parental  
21 cooperation or child abuse, or there is substantiated evidence that  
22 a party has perpetrated domestic violence.

23 (H) Whether a party has a criminal record.

24 (2) If the court makes a finding that there is a need for  
25 preventative measures after considering the factors listed in  
26 paragraph (1), the court shall consider taking one or more of the  
27 following measures to prevent the abduction of the child:

28 (A) Ordering supervised visitation.

29 (B) Requiring a parent to post a bond in an amount sufficient  
30 to serve as a financial deterrent to abduction, the proceeds of which  
31 may be used to offset the cost of recovery of the child in the event  
32 there is an abduction.

33 (C) Restricting the right of the custodial or noncustodial parent  
34 to remove the child from the county, the state, or the country.

35 (D) Restricting the right of the custodial parent to relocate with  
36 the child, unless the custodial parent provides advance notice to,  
37 and obtains the written agreement of, the noncustodial parent, or  
38 obtains the approval of the court, before relocating with the child.

39 (E) Requiring the surrender of passports and other travel  
40 documents. ~~If applicable, the name of a parent and the child shall~~

1 ~~be entered in the Prevent Departure Program of the United States~~  
2 ~~Department of Homeland Security or any similar federal program~~  
3 ~~designed to prevent unauthorized departures to foreign countries.~~  
4 *If a parent is ordered to surrender passports and other travel*  
5 *documents pursuant to this subparagraph, and if the parent is a*  
6 *foreign national, the court shall request that the names of the*  
7 *parent and the child or children be placed in the Prevent Departure*  
8 *Program of the United States Department of Homeland Security*  
9 *by contacting the Office of Children's Issues at the United States*  
10 *Department of State.*

11 (F) Prohibiting a parent from applying for a new or replacement  
12 passport for the child. ~~The child's name shall be placed in the~~  
13 ~~Children's Passport Issuance Alert Program of the United States~~  
14 ~~Department of State.~~ *If a parent is ordered to surrender passports*  
15 *and other travel documents pursuant to subparagraph (E) and is*  
16 *prohibited from applying for a new or replacement passport*  
17 *pursuant to this subparagraph, the court shall enter the name of*  
18 *the child or children in the Children's Passport Issuance Alert*  
19 *Program of the United States Department of State by contacting*  
20 *the Office of Children's Issues at the United States Department of*  
21 *State and submitting the appropriate form with a court order*  
22 *showing that the court has jurisdiction over the matter.*

23 (G) Requiring a parent to notify a relevant foreign consulate or  
24 embassy of passport restrictions and to provide the court with proof  
25 of that notification.

26 (H) Requiring a party to register a California order in another  
27 state as a prerequisite to allowing a child to travel to that state for  
28 visits, or to obtain an order from another country containing terms  
29 identical to the custody and visitation order issued in the United  
30 States (recognizing that these orders may be modified or enforced  
31 pursuant to the laws of the other country), as a prerequisite to  
32 allowing a child to travel to that ~~county~~ country for visits.

33 (I) Obtaining assurances that a party will return from foreign  
34 visits by requiring the traveling parent to provide the court or the  
35 other parent or guardian with any of the following:

- 36 (i) The travel itinerary of the child.  
37 (ii) Copies of round trip airline tickets.  
38 (iii) A list of addresses and telephone numbers where the child  
39 can be reached at all times.

1 (iv) An open airline ticket for the left-behind parent in case the  
2 child is not returned.

3 (J) Including provisions in the custody order to facilitate use of  
4 the Uniform Child Custody Jurisdiction and Enforcement Act (Part  
5 3 (commencing with Section 3400)) and the Hague Convention  
6 on the Civil Aspects of International Child Abduction  
7 (implemented pursuant to 42 U.S.C. Sec. 11601 et seq.), such as  
8 identifying California as the home state of the child or otherwise  
9 defining the basis for the California court's exercise of jurisdiction  
10 under Part 3 (commencing with Section 3400), identifying the  
11 United States as the country of habitual residence of the child  
12 pursuant to the Hague Convention, defining custody rights pursuant  
13 to the Hague Convention, obtaining the express agreement of the  
14 parents that the United States is the country of habitual residence  
15 of the child, or that California or the United States is the most  
16 appropriate forum for addressing custody and visitation orders.

17 (K) Authorizing the assistance of law enforcement.

18 (3) If the court imposes any or all of the conditions listed in  
19 paragraph (2), those conditions shall be specifically noted on the  
20 minute order of the court proceedings.

21 (4) If the court determines there is a risk of abduction that is  
22 sufficient to warrant the application of one or more of the  
23 prevention measures authorized by this section, the court shall  
24 inform the parties of the telephone number and address of the Child  
25 Abduction Unit in the office of the district attorney in the county  
26 where the custody or visitation order is being entered.

27 (c) The Judicial Council shall make the changes to its child  
28 custody order forms that are necessary for the implementation of  
29 subdivision (b). This subdivision shall become operative on July  
30 1, 2003.

31 (d) Nothing in this section affects the applicability of Section  
32 278.7 of the Penal Code.

33 ~~SEC. 3.~~

34 *SEC. 4.* Section 3134.5 of the Family Code is amended to read:

35 3134.5. (a) Upon request of the district attorney, the court may  
36 issue a protective custody warrant to secure the recovery of an  
37 unlawfully detained or concealed child. The request by the district  
38 attorney shall include a written declaration under penalty of perjury  
39 that a warrant for the child is necessary in order for the district  
40 attorney to perform the duties described in Sections 3130 and 3131.



1 The protective custody warrant for the child shall contain an order  
2 that the arresting agency shall place the child in protective custody,  
3 or return the child as directed by the court. The protective custody  
4 warrant for the child may also contain an order to freeze the  
5 California assets of the party alleged to be in possession of the  
6 child. The protective custody warrant may be served in any county  
7 in the same manner as a warrant of arrest and may be served at  
8 any time of the day or night.

9 (b) Upon a declaration of the district attorney that the child has  
10 been recovered or that the warrant is otherwise no longer required,  
11 the court may dismiss the warrant without further court  
12 proceedings.

O